

INDIVIDUAL RULES OF PRACTICE IN CIVIL CASES
Katherine Polk Failla, United States District Judge

Chambers

United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007
(212) 805-0290

Courtroom

40 Foley Square, Courtroom 618
Jose Lopez, Courtroom Deputy
(212) 805-4570

1. Procedural Rules

- A. Generally.** The Court’s procedures are governed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”), and the Individual Practices set forth below. Unless otherwise ordered, these Individual Practices apply to all civil matters before Judge Failla, except civil *pro se* cases (see Individual Rules of Practice in Civil Pro Se Cases, available at <http://nysd.uscourts.gov/judge/Failla>).
- B. Pilot Project and Plans.** If a case is designated by Order of the Court to be part of one of the Court’s pilot projects or plans (e.g., the Plan for Certain Section 1983 Cases Against the City of New York, or the Pilot Project Regarding Case Management Techniques for Complex Civil Cases), the procedures in such project or plan shall govern to the extent that they are inconsistent with these Individual Practices.

2. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with the Court should be by letter. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, letters should be filed electronically on ECF, with a courtesy copy, clearly marked as such, delivered to the court via e-mail (Failla_NYSDChambers@nysd.uscourts.gov). E-mails shall state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the e-mail; such communications shall be included only in the body of the letter. Copies of correspondence between counsel shall not be filed on ECF or otherwise sent to the Court (except as exhibits to an otherwise properly filed document. The courtesy copy of any letter filed on ECF must be an electronic copy of the filed version of the letter and must include the automatically generated ECF header (that is, the text — e.g., “Case 1:13-cv-01234-ABC Document 100 Filed 09/1/13 Page 1 of 1” — appearing at the top of each page of a document on the ECF system).

- B. Telephone Calls.** For docketing, scheduling, and calendar matters, call Mr. Jose Lopez, Courtroom Deputy, at (212) 805-4570. Otherwise, telephone calls to Chambers are permitted only for urgent matters. In such situations, call Chambers at (212) 805-0290.
- C. Faxes.** Faxes to Chambers are not permitted.
- D. Hand Deliveries.** Where requested by the Court, hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Daniel Patrick Moynihan United States District Courthouse at 500 Pearl Street, New York, NY 10007, and may not be brought directly to Chambers. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then taken to Chambers. If the hand-delivered letter is urgent and requires the Court's immediate attention, however, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.
- E. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made by letter, e-mailed to the Court as described in Section 1(A) above, and should state: (1) the original due date; (2) the number of previous requests for adjournment or extension of time; (3) whether these previous requests were granted or denied; (4) the reason for the current request; and (5) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached. If the request is for an adjournment of a court appearance, absent an emergency, the request shall be made at least 48 hours prior to the scheduled appearance.
- F. Related Cases.** After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing as well as the docket number of the case to which it is related (e.g., 13 Civ. 1234 [rel. 11 Civ. 4321]).
- G. Docketing of Letters.** Absent a request to file a letter under seal, the parties should assume that any substantive letter will be docketed by the Court.
- H. Letter Motions.** Letter motions may be filed via ECF if they comply with the Local Rules and the S.D.N.Y. Electronic Case Filing Rules and Instructions. In particular, all requests for adjournments, extensions, and pre-motion conferences should be filed as letter motions. A courtesy copy must also be provided to Chambers via e-mail.

- I. Proposed Orders and Stipulations.** All stipulations and orders, including consent orders, orders to show cause, preliminary injunctions, and temporary restraining orders, should be brought to the Orders Clerk (500 Pearl Street, Clerk’s Office) and Judgments should be presented to the Judgments Clerk (500 Pearl Street, Clerk’s Office). Counsel may also email them to orders_and_judgments@nysd.uscourts.gov. Courtesy copies need not be sent to Chambers.
 - J. Cases Removed from State Court.** Counsel for the removing party or parties must, in addition to providing a copy of all process, pleadings, and papers served upon the defendants pursuant to 28 U.S.C. § 1446(a), provide the Court with a courtesy copy of any pleading filed or served while the case remained in State court. Counsel for all parties must file a notice of appearance in this Court promptly upon removal.
 - K. Urgent Communications.** Materials filed via ECF may not be reviewed the same day they are filed. If a given submission requires immediate attention, please notify Chambers by telephone after it is filed.
- 3. Conferences**
- A. Attendance by Principal Trial Counsel.** The attorney who will serve as principal trial counsel must appear at all conferences with the Court.
 - B. Initial Case Management Conference.** The Court will generally schedule a Fed. R. Civ. P. 16(c) conference within three months of the filing of the Complaint. The Clerk’s Office will e-mail the Notice of Initial Pretrial Conference to plaintiff’s counsel, who is then responsible for distributing copies to all parties. Prior to the conference date, one courtesy copy of the pleadings shall be e-mailed to Chambers. In accordance with the Electronic Case Filing Rules and Instructions, counsel are required to register as ECF filers and enter an appearance in the case before the initial pretrial conference. Counsel can obtain instructions on how to register at http://www.nysd.uscourts.gov/ecf_filing.php.
 - C. Discovery Disputes.** The parties are to follow Local Civil Rule 37.2 with the following modifications: Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, a party may e-mail a letter to the Court, no longer than three pages, explaining the nature of the dispute and requesting an informal conference. Such a letter must include a representation that the meet-and-confer process occurred and was unsuccessful. If the opposing party wishes to respond to the letter, it must submit a responsive letter, not to exceed three pages, within three business days after the request is received.

4. Motions

- A. Pre-Motion Submissions in Civil Cases.** Pre-motion submissions are required for motions to dismiss, motions for summary judgment, motions for judgment on the pleadings, motions for sanctions, and motions concerning discovery. Motions concerning discovery are discussed in Section 2(C) above.

To request a pre-motion conference for motions to dismiss, motions for summary judgment, motions for judgment on the pleadings, and motions for sanctions, the putative moving party shall e-mail the Court a letter, not to exceed three pages, describing the grounds for the proposed motion, and whether the motion is on consent of all parties. If the motion is not on consent, any opposing party should submit a letter setting forth its position, not to exceed three pages, within three business days after the request is received. The Court will then determine whether to hold a pre-motion conference in the matter.

The submission of a pre-motion letter does not stay any future deadlines, except that submission of a pre-motion letter concerning a motion to dismiss will stay the defendant's time to answer or otherwise move with respect to the Complaint.

- B. Memoranda of Law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities.
- C. Filing of Motion Papers.** Motion papers shall be filed with the Clerk's office promptly after service.
- D. Courtesy Copies.** One courtesy copy of all motion papers, marked as such, shall be mailed or hand-delivered to the Court by the movant at the time the reply is served. All courtesy copies should be three-hole punched, tabbed, and placed in binders.
- E. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.
- F. Failure of the Court to Schedule Argument or Decide a Motion.** If a motion is not decided within two months after the filing of the reply brief, counsel for the movant shall send a letter to alert the Court.
- G. Preliminary Injunction Motions.** The Court generally follows the procedure for the conduct of non-jury trials described in Section 5(C) below.

- H. **Motions To Exclude the Testimony of Experts.** Pursuant to Rules 702-705 of the Federal Rules of Evidence and the line of cases beginning with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), motions to exclude testimony of experts must be made by the deadline for dispositive motions and should not be treated as motions *in limine*.
- I. **Default Judgments.** A plaintiff seeking a default judgment must proceed by way of an Order to Show Cause pursuant to the procedure set forth in Attachment A.

5. Special Rules for Summary Judgment Motions.

- A. **Generally Not Available in Non-Jury Cases.** Absent good cause, the Court will not have summary judgment practice in a non-jury case.
- B. **Courtesy Copy of Deposition Transcript.** Except in *pro se* cases, the parties shall provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. Parties should provide these materials on a CD only, not on a DVD or memory stick and not by e-mail.
- C. **Local Rule 56.1 Statements.** Pursuant to Local Civil Rule 56.1, a movant for summary judgment shall file a statement of material undisputed facts and the opposing party shall respond.
 - i. **Electronic Copy to Other Parties.** Except in *pro se* cases, the moving party should provide all other parties with an electronic copy, in Microsoft Word format, of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1.
 - ii. **Organization of 56.1 Statements.** The 56.1 Statement must be organized into numbered paragraphs and each numbered paragraph must contain only one factual assertion. Each factual assertion must be followed by a citation to the portion(s) of the evidentiary record relied upon. Opposing parties must reproduce each entry in the moving party's 56.1 Statement, and set out the opposing party's response directly beneath it. The response must state specifically what is admitted and what is disputed, and the basis for any dispute, citing specific portions of the evidentiary record relied upon. The response may go on to make additional factual allegations in paragraphs numbered consecutively to those of the moving party (i.e., they do not begin re-numbering at 1). If additional factual allegations are made by the opposing party, the moving party must file its own responsive 56.1 Statement addressing the additional assertions.

- iii. **Multiple Parties Must Coordinate Statements.** If multiple parties are submitting 56.1 Statements, they must coordinate their statements to provide for consecutive, non-overlapping, numbered paragraphs in their respective statements.

6. Other Pretrial Guidance

- A. **Redactions and Filing Under Seal.** Any party wishing to file in redacted form any pleading, motion, memorandum, exhibit, or other document, or any portion thereof, must be made promptly by letter brief and must be supported by applicable case law and an attorney declaration setting forth particularized allegations justifying such relief. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). The party must attach to its letter brief: (1) one full set of the relevant document(s) in highlighted form (i.e., with the words, phrases, or paragraphs to be redacted highlighted); and (2) one partial, looseleaf set of solely those pages on which the party seeks to redact material. Upon receiving these documents, the Court will individually review the proposed redactions. Chambers will file under seal the unredacted pages for which the Court has approved redactions, and the party shall then file the redacted version of the document(s) on ECF.
- B. **Applications for a Temporary Restraining Order.** A party must confer with his or her adversary before making an application for a temporary restraining order unless the requirements of Fed. R. Civ. P. 65(b) are met. As soon as a party decides to seek a temporary restraining order, he or she must call Chambers at (212) 805-0290 and state clearly whether (1) he or she has notified the adversary, and whether the adversary consents to temporary injunctive relief; or (2) the requirements of Fed. R. Civ. P. 65(b) are satisfied and no notice is necessary. If a party's adversary has been notified but does not consent to temporary injunctive relief, the party seeking a restraining order must bring the application to the Court at a time mutually agreeable to the party and its adversary, so that the Court may have the benefit of advocacy from both sides in deciding whether to grant temporary injunctive relief.
- C. **Settlement Agreements.** The Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce the agreement, the parties must place the terms of their settlement agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to endorse or include the terms of their settlement agreement in their stipulation of settlement and dismissal.

- D. Diversity Jurisdiction Cases.** In any action in which subject matter jurisdiction is founded on diversity of citizenship pursuant to 28 U.S.C. § 1332, the party asserting the existence of such jurisdiction shall, prior to the Initial Pretrial Conference, e-mail to the Court a letter no longer than three pages explaining the basis for that party's belief that diversity of citizenship exists. In cases where any party is a corporation, the letter shall state both the place of incorporation and the principal place of business. In cases where any party is a partnership, limited partnership, limited liability company, or trust, the letter shall state the citizenship of each of the entity's members, shareholders, partners, and/or trustees.
- E. Bankruptcy Appeals.** Briefs must be submitted in accordance with Fed. R. Bankr. P. 8009-10. Counsel may extend the default deadlines by stipulation submitted to the Court no later than two business days before the brief is due.

7. Trial Procedures

- A. Joint Pretrial Order.** Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery, the parties shall e-mail to the Court a proposed joint pretrial order, which shall include the following:
- i. The full caption of the action;
 - ii. The names, law firms, addresses, and telephone and fax numbers of trial counsel;
 - iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount;
 - iv. A brief summary by each party of the claims and defenses that the party asserts remain to be tried, including citations to any statutes on which the party relies. Such summaries shall also identify all claims and defenses previously asserted which are not to be tried. The summaries should not recite any evidentiary matter;
 - v. A statement as to the number of trial days needed and whether the case is to be tried with or without a jury;
 - vi. A statement as to whether all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
 - vii. Any stipulations or agreed statements of fact or law to which all parties consent;

- viii. A list of all trial witnesses, indicating whether such witnesses will testify in person or by deposition, and a brief summary of the substance of each witness's testimony;
- ix. A designation by each party of deposition testimony to be offered in its case in chief and any counter-designations and objections by any other party;
- x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.;
- xi. A statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages; and
- xii. A statement of whether the parties consent to less than a unanimous verdict.

B. Required Pretrial Filings. Each party shall file and serve with the joint pretrial order:

- i. In all cases, motions addressing any evidentiary issues or other matters that should be resolved *in limine*. Opposition papers shall be filed within seven days thereafter, and reply papers, if any, shall be filed within four days of any opposition;
- ii. In all cases where a party believes it would be useful to the Court, a pretrial memorandum of law;
- iii. In jury cases, requests to charge and proposed *voir dire* questions that shall be submitted as both .pdf and Microsoft Word documents; and
- iv. In non-jury cases, proposed findings of fact and conclusions of law. The proposed findings of fact should be detailed and should include citations to the proffered trial testimony and exhibits, as there may be no opportunity for post-trial submissions.

C. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party shall e-mail to the Court and serve on opposing counsel, but not file on ECF, the following:

- i. Copies of affidavits constituting the direct testimony of each trial witness, except for the direct testimony of an adverse party, a person whose attendance is compelled by subpoena, or a person for whom the Court has agreed to hear direct testimony live at the trial. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at the trial. Only those witnesses who will be

cross-examined need to appear at trial. The original signed affidavits should be brought to trial to be marked as exhibits;

- ii. All deposition excerpts which will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition. Each synopsis shall include page citations to the pertinent pages of the deposition transcripts; and
- iii. All documentary exhibits.

D. Filings in Opposition. Any party may file the following documents within one week after the filing of the pretrial order, but in no event less than two days before the scheduled trial date:

- i. Objections to another party's requests to charge or proposed *voir dire* questions;
- ii. Opposition to any motion *in limine*, due within seven days of the filing of the motion; and
- iii. Opposition to any legal argument in a pretrial memorandum.

E. Courtesy Copies. Two courtesy copies of all documents identified in Sections 5(A), (B), (C)(i-ii), and (D) above should be mailed or hand-delivered to Chambers on the date on which they are to be served or filed. Only one set of documentary exhibits is required. Voluminous material may be organized either in binders or manila file folders, but in any event, the courtesy copies shall be separately arranged into two independent sets.

F. Trial Schedule. Trials will generally be conducted Monday through Friday from 9:00 a.m. to 2:30 p.m., with one short break from approximately 11:30 a.m. to noon.

G. Jury Selection. The jury will be selected by the struck panel method.

8. Policy on the Use of Electronic Devices

A. Mobile Phones and Personal Electronic Devices. Attorneys' use of mobile phones, Blackberries, and other personal electronic devices within the Courthouse and its environs is governed by Standing Order M10-468. Any attorney wishing to bring a telephone or other personal electronic device into the Courthouse must be a member of this Court's Bar, must obtain the necessary service pass from the District Executive's Office, and must show the service pass upon entering the Courthouse. Mobile phones are permitted inside the Courtroom, but they must be kept turned off at all times. Non-compliance with this rule will result in forfeiture of the device for the remainder of the proceedings.

B. Computers, Printers, or Other Electronic Equipment. In order for an attorney to bring into the Courthouse any computer, printer, or other electronic equipment not qualifying as a “personal electronic device,” specific authorization is required by prior Court Order. Any party seeking to bring such equipment into the Courthouse should e-mail a letter to Chambers at least 10 business days in advance of the relevant trial or hearing requesting permission to use such equipment. The request letter shall identify the type(s) of equipment to be used and the name(s) of the attorney(s) who will be using the equipment. Chambers will coordinate with the District Executive’s Office to issue the Order and forward a copy to counsel. The Order must be shown upon bringing the equipment into the Courthouse.

DEFAULT JUDGMENT PROCEDURE

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Failla in Courtroom 618. Leave blank the date and time of the conference. Judge Failla will set the date and time when she signs the Order.
2. Provide the following supporting papers with the Order to Show Cause.
 - a. An attorney's affidavit setting forth:
 - i. the basis for entering a default judgment, including a description of the method and date of service of the Summons and Complaint;
 - ii. the procedural history beyond service of the Summons and Complaint, if any;
 - iii. whether, if the default is applicable to fewer than all of the defendants, the Court may appropriately order a default judgment on the issue of damages prior to resolution of the entire action;
 - iv. the proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs; and
 - v. the legal authority for why an inquest into damages would be unnecessary.
 - b. A proposed default judgment.
 - c. Copies of all of the pleadings.
 - d. A copy of the Affidavit of Service of the Summons and Complaint.
 - e. If failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed.
3. Take the Order to Show Cause and supporting papers to the Orders and Judgments Clerk (Room 370, 500 Pearl Street) for initial review and approval.
4. After the Orders and Judgments Clerk approves the Order to Show Cause, promptly contact Mr. Jose Lopez, Courtroom Deputy, at (212) 805-4570 to arrange for delivery of the papers to Chambers for the Judge's signature. Also bring a courtesy copy of the supporting papers to leave with Chambers.
5. After the Judge signs the Order, serve a conforming copy of the Order and supporting papers on the defendant. Chambers will retain the original signed Order for docketing purposes, but will supply you with a copy. You may also print a copy of the signed Order from the CM/ECF system after the Order has been docketed.

6. Prior to the return date, file through the CM/ECF system: (1) an Affidavit of Service, reflecting that the defendant was served with a conforming copy of the Order and supporting papers; and (2) the supporting papers. The signed Order itself will be scanned and docketed by Chambers.
7. Prior to the return date, take the proposed judgment, separately backed, to the Orders and Judgments Clerk (Room 370, 500 Pearl Street) for the Clerk's approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.